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In Re: Patent Term Extension
Application for
U.S. Patent No. 6,444,673

NOTICE OF FINAL DETERMINATION

A determination has been made that U.S. Patent No. 6,444,673, which claims the human drug product LUNESTA® (eszopiclone), is eligible for patent term extension under 35 U.S.C. § 156. The period of extension has been determined to be 760 days.

A single request for reconsideration of this final determination as to the length of extension of the term of the patent may be made if filed within one month of the date of this notice. Extensions of time under 37 CFR § 1.136(a) are not applicable to this time period. In the absence of such request for reconsideration, the Director will issue a certificate of extension, under seal, for a period of 760 days.

The period of extension has been calculated using the Food and Drug Administration determination of the length of the regulatory review period published in the Federal Register of February 10, 2009, (74 Fed. Reg. 6636). Under 35 U.S.C. § 156(c):

Period of Extension	=	½ (Testing Phase) + Approval Phase
	=	½ (1,256 - 1,106) + 685
	=	760 days (2.1 years)

Since the regulatory review period began August 25, 1999, before the patent issued (September 3, 2002), only that portion of the regulatory review period occurring after the date the patent issued has been considered in the above determination of the length of the extension period 35 U.S.C. § 156(c). (From August 25, 1999, to and including September 3, 2002, is 1,106 days; this period is subtracted for the number of days occurring in the testing phase according to the FDA determination of the length of the regulatory review period.) No determination of a lack of due diligence under 35 U.S.C. § 156(c)(1) was made.

Neither the limitations of 35 U.S.C. § 156(g)(6) nor 35 U.S.C. § 156(c)(3) operate to reduce the period of extension determined above.

Upon issuance of the certificate of extension, the following information will be published in the Official Gazette:

U.S. Patent No.:	6,444,673
Granted:	September 3, 2002

Original Expiration Date[1]:	January 16, 2012
Applicant:	Claude Cotrel, et al.
Owner of Record:	Sepracor Inc.
Title:	Optically Active 5H-Pyrrolo[3,4-B] Pyrazine Derivative, Its Preparation and Pharmaceutical Compositions Containing It
Product Trade Name:	LUNESTA® (eszopiclone)
Term Extended:	760 days
Expiration Date of Extension:	February 14, 2014

Any correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Hatch-Waxman PTE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450.

Telephone inquiries related to this determination should be directed to the undersigned at (571) 272-7755.

Mary C. Till
Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Office of Regulatory Policy
Food and Drug Administration
10903 New Hampshire Ave., Bldg. 51, Rm. 6222
Silver Spring, MD 20993-0002

Attention: Beverly Friedman

RE: LUNESTA® (eszopiclone)
Docket No.: FDA-2005-E-0423

[1]Subject to the provisions of 35 U.S.C. § 41(b).